

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2230 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

UMA SMALL SCALE INDUSTRIAL CO-OP.SOCIETY LTD.

Versus

COLLECTOR

Appearance:

MR YN OZA for Petitioner

Mr.K.N. Raval, ASSTT. GOVERNMENT PLEADER for
Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 01/12/2000

ORAL JUDGEMENT

The matter is being adjourned from time to time starting from 16.6.2000. At one stage, i.e. on 4.8.2000, it was given out by Mr.Y.N. Oza that he would like to file a Civil Application for bringing necessary

amendment; then the matter was adjourned to 18.8.2000. Time was sought on behalf of Mr.Oza on 18.8.2000, whereupon as a last opportunity, the matter was adjourned to 25.8.2000. On 15.9.2000, arguments were heard in part, at which stage learned Assistant Govt. Pleader sought time to get instructions. Again on 17.11.2000, it was mentioned on behalf of learned advocate for the petitioner that it was not convenient for him to go on with the matter on that day. With consent, it was adjourned to 1.12.2000.

2. Today, when the matter is called out it is given out that a letter was addressed to the present President of Uma Small Scale Industrial Cooperative Society Limited on 2.9.2000, a xerox copy of which is produced which is taken on record. It is also given out that learned advocate for the petitioner has not received any instructions. For want of instructions it is not possible for learned advocate for the petitioner to go on with the matter. It is also stated that Mr.Y.N. Oza, learned advocate has not come to Court today. Looking to the earlier record of the matter, the matter is not required any further adjournment.

3. On perusal of the papers it is clear that granting of any relief as prayed for by the petitioner would amount to perpetuating illegality which is committed by the petitioner.

4. The petition is filed challenging the order dated 30.8.1989 passed by the Collector, Surat which was confirmed by the Special Secretary, Revenue Department (Appeals) by an order dated 31.1.1991. The effect of the aforesaid two orders was that the order passed by the Special Recovery Officer, Cooperative Societies, respondent no.3 herein was cancelled. The petitioner based its challenge on the basis that the orders in question are violative of Articles 14 and 19(1)(G) of the Constitution of India. The petitioner also based its challenge on the ground that exercise of powers by respondent authorities suo motu under sec.211 of the Bombay Land Revenue Code is ex face bad and contrary to the principles laid down by the Honourable Supreme Court in the case of State of Gujarat v. Patel Raghav Natha and others, reported in 1987 (2) GLR 992. The petitioner also placed reliance on two other judgments of this Court in the case of Bipinchandra G. Dalal & another v. State of Gujarat and others, 1987 (2) GLH 127; and 1989 (1) GLH 177. The arguments of the petitioner is that the power under sec.211 of the Bombay Land Revenue Code is required to be exercised within a reasonable time. The petitioner

also drew attention of the Court to a judgement of this Court rendered in Special Civil Application No.5516 of 1990, a copy of which is produced at Annexure 'C' to the petition.

5. The petition is filed through the President of the Cooperative society, who purchased the land situated at village Bhatar, Taluka Chorasi, District Surat bearing survey nos.29, 23 + 24 admeasuring 0.93.08; 0.92.07 and 5 acres 25 gunthas. It is the case of the petitioner that the petitioner offered a price of Rs.8,25,000/-, and the respondent passed the order dated 22.5.91. It is thereafter that the District Collector, respondent no.1 issued notice on 16th June 1989 under sec.211 of the Bombay Land Revenue Code in suo motu exercise of powers. By said notice, the petitioner was called upon to show cause as to why auction sale certificate should not be cancelled. Finally, the District Collector, Surat passed an order on 30.8.1989 cancelling the said auction sale certificate issued by respondent no.3. The petitioner challenged the said order of the Collector before the Special Secretary (Appeals), Revenue Department, which came to be confirmed by an order dated 31.1.1991.

6. The order of the Collector is produced at Annexure 'A' to the petition and perusal of the said order reveals that respondent no.3 had started the proceedings of auction of land in question though the lands were situate within the limits to which Urban Land Ceiling Act was applicable. Respondent no.3 had not obtained any prior permission before commencement of auction proceedings. The Collector having found that the auction proceedings were undertaken with a view to frustrate the provisions of the Urban Land Ceiling Act, held that the order of respondent no.3 was required to be taken in suo motu revision.

7. It is interesting to note the facts of the case that the auction in question was undertaken for recovery of principal amount of Rs.100/-, and interest amount of Rs.24/- + administrative expenses of Rs.42/-, in all for Rs.166/-, only from one Shri Devjibhai Gulabhai resident of village Segva Chama, Taluka Olpad. The order further states that on perusal of papers produced by respondent no.3, it was found that said Shri Devjibhai had taken a loan of Rs.100/-, from Ambheta Section of the cooperative society and as he could not repay that amount, the land of Shri Mohansinh Mansinh, etc. who were sureties was put to auction and in the said auction one Shri Sujan Chand Chimanlal and Mulchand Das Hargovind Das of Uma Small Scale Industrial Cooperative Society

Ltd. had purchased the said land for Rs.8,25,000/-. It is also recorded in the order that the Secretary of Shri Ambheta Group Seva Sahkarai Mandali Ltd has initiated by his letter dated 1.8.1989 that said Shri Devjibhai resident of Segva Chama had already repaid his dues on 6.2.1978 and that there are no dues of the society towards him. The Additional Collector, Urban Land Ceiling, Surat by his order dated 11.7.1989 bearing No.44/ 87/ Opinion/ U.2 that so far as the land bearing survey nos.23 and 24 of village Bhatar is concerned the proceedings under section 6(1) of the Act were on as there was a representation about unauthorised construction on the land, stay order was also granted by that authority. The Collector has observed in the order after taking into consideration the overall facts of the case. It is clear that respondent no.3 ought to have auctioned the land of the original debtor rather than the land of the sureties. The proceedings of respondent no.3 pertain to urban land and therefore, the said auction is only with a view to frustrate the provisions of the Urban Land Ceiling Act. Therefore, the same were deemed fit to be cancelled and therefore, the order in question dated 30.8.1989 was passed.

8. The learned Assistant Government Pleader appearing for the respondents submitted that so far as the question of delay in exercising power is concerned, there is no delay as is held by the Apex Court in the matter of State of Orissa and others v. Brundaban Sharma and another, reported in 1995 Supp. (3) SCC 249. She submitted that the Apex Court has held that when validity of a non est order is in question the same can be agitated in any proceeding at any stage. She further submitted that in the aforesaid judgement, the Apex Court has also considered the judgement of this Court in the matter of the State of Gujarat v. Patil Raghav Natha and others, reported in (1969) 2 SCC 187, in which the aspect of delay was considered by this Court and the concept of exercising powers within a reasonable time was originated.

9. Learned Assistant Govt. Pleader further submitted that exercising extraordinary jurisdiction under Article 226 of the Constitution of India in such matters will amount to perpetuating an illegality which is committed by the parties. Learned AGP also submitted that this point is concluded in one Special Civil Application by this Court (Coram : S.K. Keshote, J.) and also in another Special Civil Application by this Court (Coram : R.K. Abichandani, J.). However, he is not able to point out citations of those judgements at

this moment. Looking to the submissions made by learned Asstt. Govt. Pleader it becomes clear that exercise of extraordinary jurisdiction under Article 226 of the Constitution of India is neither in the interest of justice nor in the interest of society. In that view of the matter, the petition is required to be dismissed.

10. In the facts and circumstances which are narrated hereinabove. I do not think it proper to accede to this request of learned advocate for the petitioner. Hence the said request is rejected.

11. In the result the petition is rejected. Rule is discharged. Interim relief stands vacated. No order as to costs.

1st December 2000 (Ravi R. Tripathi, J.)

karim*